

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section IX of the)
Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the)
1994 Fiscal Year)

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**REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.429¹ of the rules of the Federal Communications Commission (Commission), hereby replies to the comments filed by MCI Telecommunications Corporation (MCI) on the Petition filed by SWBT. SWBT asked the Commission to clarify or reconsider that part of its Report and Order² which asserts that local exchange carriers (LECs) subject to price cap regulation that wish to treat the new regulatory fees as exogenous costs should petition for a waiver of the Commission's rules.³

MCI claims that SWBT's argument that Section 61.45(D) (1) (vi) permits the LECs to treat or claim fees as exogenous costs "rewrites history."⁴ MCI then goes on to give its

¹ 47 C.F.R. Section 1.429.

² Implementation of Section IX of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, Report and Order, (FCC 94-140) (released June 8, 1994) (Report and Order).

³ Report and Order, fn. 38.

⁴ MCI, pp. 2-3.

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own "history" of the rule. Both MCI's characterization of SWBT's argument and its interpretation of the history are flawed.

SWBT did not argue that Section 61.45(d)(1)(vi) permits LECs to "treat" regulatory fees as exogenous but rather that it permits a "request" for exogenous treatment of these fees via a tariff filing without need for a waiver request. MCI's characterization implies that SWBT's position is that such a request results in an automatic Price Cap Index (PCI) adjustment. SWBT, however, did not argue that an automatic PCI adjustment for these fees is possible under the existing rules, only that the waiver process need not be used in lieu of the review available under the tariffing process.

MCI's interpretation of the history of Section 61.45(d)(1)(vi), that ties its creation to the Commission's decision on presumed endogenous treatment of natural disaster costs, is a flawed attempt to narrow the application of the rule. The relevant sections of the LEC Price Cap Order did not discuss potential exogenous treatment of natural disaster costs in reference to this rule.⁵

The actual basis of the rule, which MCI conveniently ignores, is the Commission's endogenous presumption for tax law changes in general, based on its belief that such changes are accounted for in the Gross National Product-Producer Index (GNP-PI). The relevant discussion in the LEC Price Cap Order stated,

⁵ Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, paras. 189-190 (LEC Price Cap Order).

Nevertheless, if there are tax law changes imposed at any level of government that uniquely or disproportionately affect LECs (as a class or individually), LECs may request exogenous treatment.⁶

In fact, Section 61.45(d)(1)(vi) begins "such tax law changes." The Commission made no mention of any rule waiver requirement even though this section of the LEC Price Cap Order would have been the logical point at which to address such a requirement.

The new regulatory fees are a good example of the type of "unique" tax change that falls squarely within this provision of the rules. The "other extraordinary exogenous cost changes" part of the rule simply expands its application beyond tax law changes to unforeseen items such as the Telecommunications Relay Service (TRS) assessment.⁷ Thus, no petition for waiver is required by the Rules to request exogenous treatment of the new regulatory fees.

CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission clarify or reconsider that portion of the Report and Order that appears to impose a new requirement that petitions for waiver are necessary to request exogenous treatment

⁶ Id. para. 177.

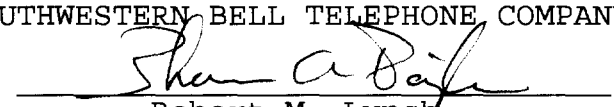
⁷ MCI makes no attempt to distinguish the Bureau's actions in the case of the TRS assessment.

for new extraordinary costs that otherwise fit within the Commission's rules for exogenous treatment.

Respectfully submitted,

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September 14, 1994

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Reply Comments Of Southwestern Bell Telephone Company" in Docket NO. MD 94-19 has been filed this 14th day of September, 1994 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above a horizontal line.

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